

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, December 10, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Steve Duvall, Gerry Krieser, Roger Larson, Dan Marvin, Mary Bills-Strand and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Becky Horner, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Vice-Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held November 26, 2003. Motion for approval made by Larson, seconded by Krieser and carried 6-0: Carlson, Duvall, Krieser, Larson, Marvin and Bills-Strand voting 'yes'; Taylor absent.

**Election of Chair:** Duvall nominated Mary Bills-Strand, seconded by Krieser. There being no other nominations, Bills-Strand was elected Chair for unexpired term of Cecil Steward until August, 2005, on a ballot vote of 6-0 (Taylor absent).

**Election of Vice-Chair:** Duvall nominated Larson, seconded by Krieser. Marvin nominated Carlson, seconded by Carlson. Ballot vote failed (2 for Carlson; 4 for Larson; Taylor absent).

Commissioner Taylor arrived. Second ballot vote for Vice-Chair failed (3 for Carlson; 4 for Larson).

Election of Vice-Chair was held over until January 7, 2004.

### **CONSENT AGENDA**

### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

### **BEFORE PLANNING COMMISSION:**

December 10, 2003

Members present: Carlson, Duvall, Krieser, Larson, Marvin, Bills-Strand and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3430; USE PERMIT NO. 57D; SPECIAL PERMIT NO. 2044; COUNTY SPECIAL PERMIT NO. 189A; SPECIAL PERMIT NO. 2041; SPECIAL PERMIT NO. 2043; COUNTY SPECIAL PERMIT NO. 204, FINIGAN 2<sup>ND</sup> ADDITION COMMUNITY UNIT PLAN; SPECIAL PERMIT NO. 2031, FINIGAN 2<sup>ND</sup> ADDITION COMMUNITY UNIT PLAN; CITY/COUNTY PRELIMINARY PLAT NO. 03007, FINIGAN SECOND ADDITION; and COUNTY FINAL PLAT NO. 03062, CEDAR GROVE ESTATES.**

Item No. 1.1a, Change of Zone No. 3430; Item No. 1.1b, Use Permit No. 57D; Item No. 1.1c, Special Permit No. 2044; Item No. 1.2, County Special Permit No. 189A; Item No. 1.5a, County Special Permit No. 204; Item No. 1.5b, Special Permit No. 2031 and Item No. 1.1c, City/County Preliminary Plat No. 03007 were removed from the Consent Agenda and scheduled for separate public hearing.

Larson moved to approve the remaining Consent Agenda, seconded by Duvall and approval carried 7-0: Carlson, Duvall, Krieser, Larson, Marvin, Bills-Strand and Taylor voting 'yes'.

**CHANGE OF ZONE NO. 3430,**  
**FROM R-3 RESIDENTIAL AND**  
**B-2 PLANNED NEIGHBORHOOD BUSINESS**  
**TO B-5 PLANNED REGIONAL BUSINESS,**

**and**

**USE PERMIT NO. 57D,**  
**TO ALLOW A MOVIE THEATER,**

**and**

**SPECIAL PERMIT NO. 2044,**  
**FOR A MOVIE THEATER,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NO. 27<sup>TH</sup> STREET AND FOLKWAYS BLVD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

December 10, 2003

Members present: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand.

Staff recommendation: Approval of the change of zone and conditional approval of the use permit amendment and special permit.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda and had separate public hearing.

Becky Horner of Planning staff submitted a new Condition #1.1.5 on the use permit to:

“Revise the Building and Parking Stall Summary table to reflect the correct floor area for Building T (the proposed theater).”

She also indicated staff support for the amendments being proposed by the applicant.

Proponents

1. **Kent Seacrest** appeared on behalf of **Ridge Development Company**, owner of the commercial property just due north of Lincoln Crossing, i.e. WalMart, PetsMart—the large area north of 27<sup>th</sup> & Superior. This is an application for a six-screen movie theater, which is consistent with the Comprehensive Plan and the theater policy. The applicant has been working with the neighbor to the south (the shopping center) because they want to be sure this application has segregated its square footage so that it is clear who has what. Seacrest requested an amendment to Condition #2 on the use permit, to which staff has agreed:

2. This approval permits the expansion of the use permit for a total of 858,769 867,769 square feet of floor area, with 51,300 square feet of floor area permitted north of North Hill Road and 816,469 square feet of floor area permitted south of North Hill Road, and modifications to the required front yard setback along Folkways Boulevard and setback from the residential district as shown on the site plan.

Carlson noted that this shows the theaters and then potentially a restaurant to the east. He noted that the Comprehensive Plan talks about accessibility for pedestrian/bicycle, etc. Looking at the R-5 apartments to the east and other potential residential, will the pedestrians be able to walk over to dinner and a movie in a safe, easy way? Seacrest showed the site plan and the location of the apartments and the theater building/restaurant, indicating the location of the sidewalks bringing the pedestrians right by the apartment complex. “The shopping center does not have sidewalks on their side but we are proposing sidewalks on our side.”

There was no testimony in opposition.

Carlson inquired of staff as to whether there a good trail in proximity with accessibility for bikes and pedestrians. Horner indicated that she would need to look at the trails plan to locate the nearest trail. She was thinking 27<sup>th</sup> Street had a trail. In response to access, she stated that the subdivision standards require sidewalks on both sides of all private and public streets, so the sidewalks would be required. Carlson would appreciate some attention to the pedestrian/bicycle access.

**CHANGE OF ZONE NO. 3430**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

December 10, 2003

Taylor moved approval, seconded by Krieser and carried 7-0: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

**USE PERMIT NO. 57D**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

December 10, 2003

Carlson moved to approve the staff recommendation of conditional approval, with the amendment proposed by staff and the amendment proposed by the applicant, seconded by Krieser and carried 7-0: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 2044**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

December 10, 2003

Larson moved to approve the staff recommendation of conditional approval, seconded by Taylor and carried 7-0: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand voting 'yes'. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**COUNTY SPECIAL PERMIT NO. 189A,**  
**AN AMENDMENT TO THE CHRISTIAN**  
**HERITAGE CHILDREN'S HOME SPECIAL PERMIT,**  
**ON PROPERTY GENERALLY LOCATED AT**  
**S. 148<sup>TH</sup> STREET AND OLD CHENEY ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

December 10, 2003

Members present: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing in response to letters in opposition.

Mike DeKalb of Planning staff submitted two letters in opposition to the expansion of the office building as a commercial use.

Proponents

**1. Kent Seacrest** appeared on behalf of the applicant, Christian Heritage Children's Homes. This is an amendment to an existing special permit. In 2001, this special permit came forward for youth homes out in this area. Although there was opposition by the neighbors, the Commission did recommend approval on a vote of 8-1, and the County Board granted approval for a health care facility in a philanthropic institution, including a boys home, a girls home and an office building. This amendment does not seek to add any girls or boys homes. This application concentrates on the office building portion.

**2. Gregg Nicklas**, CEO of Christian Heritages Children's Homes, continued the presentation on behalf of the applicant, stating that the intended use has not changed. The original special permit included permission to build four children's homes and an office/family training center. As the applicant went through that process they were focused on the homes for the children. Now that the homes have been built, the administrative staff has grown some. With plans to build the office building next year, the applicant believed it to be prudent to come back and ask for the additional 15' on each end of the building. The original approved plan suggested a four-phase plan. Phase one was to purchase the land. Phase two was to build the girls home, which was completed last year. Phase 3 is construction of the boys home and Phase 4 is to construct the office. The girls home was immediately at capacity, serving eight children with live-in house parents. The goal is to reunite children from Lincoln and Lancaster County with their families. If the children are not reunited with their parents, the applicant has a foster program in which to move the children. This year they broke ground in late May for construction of the boys home right next door. This would be an identical floor plan with live-in house parents licensed to serve eight boys, with opening anticipated in the first quarter of 2004. The applicant has leased an interim facility here in Lincoln pending completion of the boys home.

The proposed amendment is in reference to the office building previously approved as 7,000 sq. ft. Photographs of the proposed change to the building were shown, with 15' added to each end of the building.

Seacrest pointed out that the staff is recommending conditional approval and the County Engineer has also indicated support. The County Engineer does not believe this amendment would overload Old Cheney Road or 148<sup>th</sup> Street.

Nicklas added that sixteen employees were previously approved. They do not have plans to fill the building immediately. Therefore, the application requests allowance of up to 32 employees, which can be accommodated by adding the 15' to each end of the building. Nicklas reiterated that the applicant does not have plans for all of the positions to be filled, but they didn't want the building to be at capacity from day one.

Carlson inquired as to the functions performed by the employees. Nicklas explained that the people that would be there daily relates specifically to Lancaster County children. It is the number that would be working with the children on-site, as well as the fund-raising aspect and support personnel. For example, they recently added a part-time info-tech position, and a recruitment position to help recruit and train staff. The people that would be officing there would all be providing services to children from Lincoln and Lancaster County.

### Opposition

**1. Dean L. Petersen**, 14400 Old Cheney Road, Walton, testified in opposition. His home abuts the west edge of the two children's homes. He believes this is a typical example of the "camel getting his nose under the tent" and then keep expanding. When the neighbors opposed the original special permit at the Planning Commission, they had 700 neighbors who signed petitions in opposition to this type of development in a rural area. It was zoned agricultural. Now, he believes these facilities are becoming a business, with 30+ employees in addition to the other people that go there. What is to prevent them from wanting more employees? This project took 40 acres off the tax rolls and it raised everyone else's taxes in the area. "We are competing with a non-profit organization that is making a tremendous profit". Petersen believes that the Commission was generous in letting them have the building as approved. Are the volleyball court and basketball court going to be lighted, lighting up the neighborhood at night? Petersen and his neighbors are concerned about the light pollution, the volume of traffic on Old Cheney Road and the additional employees. Petersen does not believe the neighbors had ample notice of the neighborhood meeting that was held. If a new hearing were scheduled, Petersen believes there would be more people available to attend with more notice.

**2. Deb Kampschnieder**, 6201 S. 176<sup>th</sup> Street, testified in opposition. She is concerned about the increase in the office space. When the applicant made a presentation to the neighbors, the neighbors were told that they were asking for four homes and the office space to plan for the future, so that they wouldn't need to come back and revisit this special permit. Yet, just two years later, here they are asking for an increase in the office space. If they can anticipate the increased need, why did they not think about the need for additional employees? She was the one person that attended the neighborhood meeting and she was told that they are thinking about having a family planning and training center, and the original permit did not set out this use. Now, they are saying the state requires this training center and they would like to add it down the road. She needs clarification. She is confused, because in the rural area, the office space is to be used directly for activities that go on at that site. If they are doing administration for programs in Kearney and Hickman and other areas, will they not be doing work for those other sites in those other locations? Who is going to monitor? What precedent does this set in the county allowing a business to be run in a rural area for other sites? Why not put it in Lincoln or Bennet where there is other provision for office space?

Another concern is the increase of employees. She believes this to be a big, huge difference. 32 full-time equivalent employees could be 32 times 4 if they worked part-time. It could potentially have a huge impact on the number of people going to that area. How does that fall in line with the density requirements of this neighborhood? Does the special permit allow a minimum of 72 people in this area--a rural community? She is concerned about the increase in traffic. Old Cheney is a terrible washboard. There has been recent discussion of development having to pave the road to the entrance of their establishment. Would this be a requirement of Christian Heritage? Or would the property owners, as taxpayers, have to pick up the cost for the maintenance of that road? She is concerned about the parking and the lighting. Right now, the houses are very well lit, but they are also talking about lighted basketball and volleyball courts which are going to be added and she does not believe this was included in the original special permit. What about lighting for the parking lot? She is concerned about the impact on the neighbors. This is a treed area with a pond on the property. What impact is this going to have on the animals that are there?

All of these issues should be addressed before this is approved. Kampschnieder requested a delay until the neighbors have opportunity to look into the finer details.

#### Response by the Applicant

Seacrest advised that the applicant did have a neighborhood meeting. They got the mailing list from the Planning Department, and it is their practice to give at least one week's notice. Seacrest reiterated that this application does not add more children. The lighted basketball and volleyball courts were already approved. With regard to the family training, Seacrest stated that the facility is designated as a health care facility, and he believes that family counseling is part of a health care facility to do a more holistic training program for the child and the family. This is also a philanthropic use, thus this is not "for profit". Seacrest acknowledged that "full-time equivalent" is a job-sharing situation that they support; however, it is not the predominant type of employees. Seacrest stated that they will not have 1/4 time employees, but they might have a couple that job-share. The applicant desires to concentrate on the issue of expanding the building by master planning and doing it right. The issue is whether this is appropriate, and according to the staff, it is.

Marvin inquired as to the status of 148<sup>th</sup> Street and Old Cheney Road at this location. Seacrest indicated that the plan is to pave Old Cheney. Mike DeKalb of Planning staff stated that 148<sup>th</sup> Street is a paved County Road. Old Cheney Road is a gravel county road in the 1-6 year program for improvement to paving, with engineering one year, grading the second year and paving the third year. There is a trigger for the paving. Marvin clarified that this application creates more trips, but it doesn't trigger an event that was going to happen anyway. DeKalb concurred.

Carlson confirmed that the intention of the office space is to serve the children in these homes. They are not creating an office space for other work. Nicklas stated that the office space is to serve the children on-site as well as other children being served in Lancaster County. The office space will be used to support the children living in those homes, and the children who were living in the homes and are now in a foster home.

Staff questions

Mary Bills-Strand inquired about the lighting for the volleyball and basketball courts. DeKalb advised that the lighting was not discussed in the existing approved special permit. Seacrest believes that the lighting was shown on the plan, but there were no limitations imposed. DeKalb remembers discussing the facility and lighting relative to security.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** December 10, 2003

Marvin moved to approve the staff recommendation of conditional approval, seconded by Duvall and carried 6-1: Larson, Carlson, Marvin, Taylor, Duvall and Bills-Strand voting 'yes'; Krieser voting 'no'. This is a recommendation to the Lancaster County Board of Commissioners.

**COUNTY SPECIAL PERMIT NO. 204,**  
**and**  
**CITY SPECIAL PERMIT NO. 2031,**  
**FINIGAN 2<sup>ND</sup> ADDITION COMMUNITY UNIT PLAN,**  
**and**  
**CITY/COUNTY PRELIMINARY PLAT NO. 03007,**  
**FINIGAN 2<sup>ND</sup> ADDITION,**  
**ON PROPERTY GENERALLY LOCATED AT**  
**N. 84<sup>TH</sup> STREET AND WAVERLY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:** December 10, 2003

Members present: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand.

Staff recommendation: Deferral until adoption of build-through standards.

Ex Parte Communications: None.

Mike DeKalb of Planning staff submitted a letter in opposition to the increase in dust and traffic, and the impact on the view. The letter also suggested that the development take access off of Waverly Road, with the applicant blacktopping North 84<sup>th</sup> Street from Waverly Road to the entrance of the subdivision.



Proponents

1. **Mark Hunzeker** appeared on behalf of **Pearle Finigan**, the applicant. This is a preliminary plat with split jurisdiction for four lots on an 80 acre parcel at 84<sup>th</sup> and Waverly Road. The applicant has no objections to any of the conditions of approval, with one caveat (explained later). However, the applicant does object to the recommendation of deferral of this matter to the point when we may or may not have a series of standards for build-through acreages. This is a nominal 80 acre parcel which could be divided into four buildable parcels of approximately 20 acres each, without any approval by this body or the City Council or the County Board. But, doing that would not make much sense, in his opinion. It would create four driveways onto N. 84<sup>th</sup> as opposed to one public roadway. And, it would not preserve the balance of the property for possible future urban development. This application preserves some 68 acres for agricultural uses for the meantime, and potential future subdivision for urbanization at a long term future date.

Hunzeker agrees that the build-through concept is one which is a good one, but he does not believe it has much application in this circumstance in the sense that there is the need for a lot of additional information to accomplish that purpose. There are no standards which exist today. There is a commitment by the Planning Department to get back to the City-County Common with proposed build-through standards in some draft form. A March "draft" of build-through standards doesn't do this applicant much good. In fact, Hunzeker believes that we are probably realistically looking at June or July before the Planning Commission, City Council and County Board get an opportunity to actually adopt standards that will be applied in the future.

Hunzeker went on to state that this property is immediately across the street from an acreage subdivision which was developed by this owner. It is immediately across the street on the south from another subdivision developed by this owner, and there are acreages immediately to the west, so it would appear that this is a fairly obvious area for acreage development.

Hunzeker suggested that the build-through really only works if you have some idea of where future urban streets and infrastructure might be located. Hunzeker then displayed the Comprehensive Plantier map. Tier II takes us out somewhere between 25 and 50 years. Tier III is way beyond the foreseeable future and it takes us into areas where it is really impossible to predict where and when infrastructure might be available. He also showed the land use plan in relation to the location of this site. This proposal is on a tributary of Salt Creek that runs south and east, so if we assume that we are going to have gravity flow sewer, we are going to be flowing into the Salt Creek area at a point 2.5 miles downstream of the northeast treatment plant. Unless we have a radical change in the way we deal with our sewage

disposal in this community between now and whenever we might urbanize this area, we really don't have much of a way of laying out where the streets or sewer lines might go on the balance of this property. This proposal simply lays out four 3-acre lots on a short street and retains the balance for agricultural uses.

Hunzeker stated that the only caveat the applicant has to the conditions is on page 8 of the staff report. Condition #3.6.4 of the city special permit talks about a waiver of the cul-de-sac length in excess of 1,000 feet. Hunzeker believes that the cul-de-sac might be 850' long so they do not need that waiver.

Hunzeker submitted that there is nothing to be gained by deferral of this subdivision. It will not fit neatly into a build-through concept, even if one is adopted in the future, and he believes it unfair to this owner to require that he wait until some certain date when standards may be available. Frankly, if the applicant cannot go forward with this CUP, he can divide it into four lots that front on No. 84<sup>th</sup> Street, and go forward to make some arrangement to try to minimize the number of driveways.

Marvin inquired as to the future status of Outlot A being reserved for agricultural use. Hunzeker stated that the Outlot will remain in the ownership of the existing owner who farms the property, and he will continue to farm it or lease it for farming purposes until he can do something else with it, which, at this point, is an indefinite period. The applicant is not granting a conservation easement because he is not requesting any sort of density bonus. He is simply asking to put the four houses that would be allowed on this parcel on 12 acres rather than on 20-acres each.

### Opposition

**1. Dave Skomer**, 12550 N. 84<sup>th</sup> Street, directly across from the proposal, testified in opposition. He has talked to all of the neighbors and no one is excited about having this directly across the street. They dislike the fact that it is in their front yards. He indicated that the neighbors across the street would prefer the proposed houses be moved to the south end. He believes that the purpose of the Planning Commission is to look at this project and its long term effect on the people in the County and the City. This distance on the gravel road is a little over 1/4 mile. It will require additional fuel to make this trip. If we can save a dollar on energy, that dollar will probably be spent in the community and will roll over about \$2.45 worth of economic activity. If the houses are moved to the south end, the extra travel will be eliminated. There will be extra fuel burned with the construction equipment. As these vehicles drive up this way, they will make a lot more road dust and brake dust, which contains asbestos.

Skomer also pointed out that on the north side of the four houses there is going to be a pocket of farm ground, which means more turning around time, with more fuel and more wear on equipment. The road can be made straight by putting the houses on the south end.

Skomer informed the Commission that when one goes to purchase homeowners insurance for a rural acreage, they want to know how far the property is from a fire barn. If you are outside of a five-mile distance, you have to pay a higher premium and you can no longer get guaranteed replacement cost on your house. If the proposed houses are on the south end, they will be within the five miles. Otherwise they are going to be outside of the five miles.

#### Response by the Applicant

Hunzeker believes the things that are gained by clustering these units are substantial as opposed to laying out four separate driveways along N. 84<sup>th</sup> Street. This is a project that is in conformance with the Comprehensive Plan, as pointed out in the staff report. He is not sure that the nominal amounts of fuel savings can even be calculated, but certainly they will not be any greater than the property owners that live right across the street. Hunzeker believes there is good reason to approve this, especially when you consider the alternative of four 20-acre parcels, which is contrary to the goals of the Comprehensive Plan.

#### Staff questions

Carlson pondered that what is being proposed is what we typically would want to shepherd and support. Why deferral? DeKalb agreed that the staff generally supports clustering of subdivisions throughout the County, but the point in this particular circumstance is raising the question of the Comprehensive Plan which talks about build-through standards applying to all acreage development within Tier II and Tier III. This property is in Tier III. The staff had been operating under prior Mayoral authority. We now have a new Mayor and he is not sure that the previous position is still in effect. This property is in Tier III and we are getting to a point where the development of build-through standards is becoming eminent, or within a short period of time will be available. We are asking whether it is appropriate to defer until we get feedback. We will have some draft regulations for the Common in March and are hoping to get some input before that. The staff does support the concept of the cluster.

Carlson inquired as to whether this is likely to be the staff position on other similar applications that come forward in the next few months. DeKalb concurred.

#### **COUNTY SPECIAL PERMIT NO. 204**

#### **ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

December 10, 2003

Duvall moved approval, with conditions, seconded by Krieser.

Carlson noted that some of the testimony from Mr. Skomer was not necessarily site specific. He suggested that the issue of fuel costs is appropriate for discussion on all acreage development. He believes it is appropriate that we had studies done to determine costs of services and appropriate that we called for and are now completing build-through standards,

so he believes that deferral would be appropriate to see how the standards fall out and to see if they apply to this development.

Motion for conditional approval carried 6-1: Larson, Marvin, Krieser, Taylor, Duvall, and Bills-Strand voting 'yes'; Carlson voting 'no'. This is a recommendation to the Lancaster County Board of Commissioners.

**CITY SPECIAL PERMIT NO. 2031**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

December 10, 2003

Duvall moved approval, with conditions, seconded by Taylor and carried 6-1: Larson, Marvin, Krieser, Taylor, Duvall, and Bills-Strand voting 'yes'; Carlson voting 'no'. This is a recommendation to the City Council.

**CITY/COUNTY PRELIMINARY PLAT NO. 03007**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

December 10, 2003

Duvall moved approval, with conditions, seconded by Krieser and carried 6-1: Larson, Marvin, Krieser, Taylor, Duvall, and Bills-Strand voting 'yes'; Carlson voting 'no'. This is final action on that portion within the City's jurisdiction, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission. The action on the portion in the County's jurisdiction is a recommendation to the Lancaster County Board of Commissioners.

**CHANGE OF ZONE NO. 3424**

**FROM R-4, R-5 and R-6 RESIDENTIAL**

**AND B-3 COMMERCIAL**

**TO R-2 RESIDENTIAL,**

**ON PROPERTY GENERALLY LOCATED**

**BETWEEN S. 9<sup>TH</sup> STREET AND S. 13<sup>TH</sup> STREET,**

**FROM WASHINGTON STREET TO SOUTH STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

December 10, 2003

Members present: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: None.

Greg Czapslewski of Planning staff submitted one letter in support and one letter in opposition.

Proponents

**1. Kristina Wamstad-Evans**, Secretary of the Everett Neighborhood Association, presented the application. This downzoning project is a project they have been working on for almost a year. The area is a thin triangle from G Street to South and 9<sup>th</sup> to 13<sup>th</sup> Streets. Everett is one of the oldest neighborhoods in Lincoln, originally owned and subdivided by two of Lincoln's founders. As early as the 1900's, there was a trend that started replacing the single family housing with multi-family housing. Today's Everett Neighborhood is representative of a combination of multi- and single-family residences, churches, schools and small businesses. The area north of Washington is primarily rental housing. She showed a map from the 2000 Census, showing that the area south of Washington is mostly owner-occupied housing. This request for downzoning to R-2 Residential applies to the southern portion of the neighborhood association, including Washington to South and 9<sup>th</sup> to 13<sup>th</sup>, presently zoned R-4, R-5, R-6 and B-3. The boundaries are based upon the owner-occupied versus renters or businesses. The majority is now owner-occupied. R-2 encourages home ownership and improves the quality of life, builds community pride and instills security. The existing homes are well-maintained so there is no need to remove them to put up apartment complexes. Wamstad-Evans displayed pictures of examples of homes in the area that are well-maintained, including 1130 Plum, 1144 Peach, and 1834 So. 11<sup>th</sup>.

Wamstad-Evans suggested that another positive for the R-2 zoning is that there is a lot of stress being put on the public utilities. The water mains in this neighborhood are 100 years old and the apartment complexes would put a lot of stress on that system. There is a good balance of single-family and multi-family housing that exists today. Parking and traffic could be a problem with any higher density. There are currently no vacant lots to build upon. The neighborhood association conducted a survey in October, resulting in 97% support.

Wamstad-Evans lives at 1209 Peach Street, having moved there less than a year ago. She is representative of a lot of young families that are trying to encourage people to move into this area.

**2. Jeff Tangeman**, President of the Everett N.A., thanked the members of the association who have worked on this presentation and he urged the Commission to follow the staff recommendation and approve this change of zone for the southern end of the Everett Neighborhood. He did receive a phone call and email from one of the long-time board members who lives at 1500 S. 11<sup>th</sup> Street, who is unable to attend today's meeting due to the flu. Tangeman read her statements into the record—she remembers the destruction of single family homes being replaced by 12-plexes, with the fabric going from long term owners to transient renters. The owners of the 12-plexes did not care enough to have an on-site manager and there was litter from the tenants. The northern part of Everett became congested and the 12-plexes no longer provided a family atmosphere. It is her hope that the downzone will prevent the destruction of the southern part of Everett which remains single

family and owner-occupied. The neighborhoods surrounding the downtown area are fragile and this will help strengthen the neighborhood.

In response to the letter in opposition, Tangeman stated that he has had conversations with building and commercial development owners and they have discussed the need to expand business zoning south of Plum Street. If some developer acquired a number of more dilapidated properties in these blocks and had a proposal for a lawyer, doctor or dental offices, he could see the association working with the developer on a project that enhanced the neighborhood. He agrees that economic development is important to Lincoln, but so is neighborhood preservation. Tangeman supports this downzone to enhance an older neighborhood, but he could some day support a business development on the fringe of the neighborhood.

**3. Sue Landholm**, 946 Peach, Vice-President of the Everett Neighborhood Association, testified in support. She believes that this downzone will help maintain the character of the neighborhood and encourage new resident home buyers and long term renters to the neighborhood.

### Opposition

**1. Michael Tavlin**, 340 Victory Lane, testified on behalf of B&J Partnership, the current owner of property on the northwest corner of 9<sup>th</sup> and South and both the north side and south sides of South Street immediately to the east of 13<sup>th</sup>, between 14<sup>th</sup> and 16<sup>th</sup> Streets. He believes that the adjacent property owned by B&J will be adversely affected if this request is approved. If a small but prudent modification were to be made, B&J would withdraw its opposition. It is his understanding that the City's Urban Development Department is currently in the midst of conducting a study regarding redevelopment of the entire South Street business corridor. It is not clear when that study will be completed, but it is anticipated to be sometime in 2004. Therefore, Tavlin is of the position that downzoning at this time of property immediately adjacent to what is certainly expected by virtue of that study to be an important south Lincoln business corridor, is premature at best, and ill-advised at worst. It would be prudent to defer any decision on this change of zone of the property bordered by Plum and South until completion of that study. To do otherwise risks an outcome that will likely be inconsistent with the recommendations of the redevelopment study and which will invite subsequent applications for rezoning or upzoning based on the city's own redevelopment study. Tavlin requested that the change of zone on the property between Plum and South Streets be placed on pending until the Urban Development South Street redevelopment plan is completed. There doesn't seem to be any urgency or any compelling reason to take this action on the property bordered by Plum and South Street at this time, given what is in the pipeline.

In response to a question from Larson, Tavlin clarified that he is referring to the block from the north side of South Street to the south side of Plum Street. He is suggesting that the change of zone for the tier of blocks between South and Plum Streets be placed on pending, and then the Planning Commission could proceed to consider the balance of the proposal.

Carlson inquired whether Tavlin's concerns would be satisfied if the existing B-3 were omitted from the downzone, and that the downzone only address the residentially zoned property. Tavlin indicated that his preference would be to just put the entire tier of blocks on pending. Carlson noted that preserving the B-3 preserves all the block faces along South Street. Tavlin believes that could work, but he would prefer that the entire tier of blocks be placed on pending.

Carlson suggested that the B-3 be removed from the zoning request. Tavlin believes it would be expedient to draw a straight line along Plum Street until Urban Development completes the study.

**3. Don Tapp**, 941 Newport Blvd., testified in opposition. He owns a 6-plex at 1215 Peach and he understands that if this zoning change takes place, the replacement of his building in case of fire destruction would be limited to a single family dwelling. He believes this would be considered a taking. As far as value of his property, some of the sale prices of the R-2 lots are less than half the value of an R-6 lot. R-2 lots are purchased for \$17,000 to \$18,000; R-6 could be sold for \$30,000 to \$35,000. He believes that the value of his property will be decreased by this change of zone to R-2. He is not aware of much property in the area that is vacant that anyone would need to be building upon to go to R-6 multiple dwellings. He does not see where the zone change is going to make the area more family oriented or have an impact on the historic homes. Most developers are going to go to the outskirts of town and will not be coming into the Everett Neighborhood.

**4. Al Plessman**, who owns a law office at 10<sup>th</sup> & Plum, testified in opposition. He agreed with almost all the testimony. He supports the Everett Neighborhood in their effort to protect the neighborhood quality, but he agrees that if there is a study going on along South Street, it would not be a good idea to change the lay of the land with a change of zone while that study is pending. It is appropriate to perhaps remember the history of other residential downzoning in the staff report--it has never included any B-3 property before. If that's true, then initially he is jealous because he does not want to have B-3 property at risk. His property is zoned B-3 and the property across the west is zoned B-3, which is included in this change. There is significance in changing from B-3 to R-2. At a minimum, he believes it would be prudent to withdraw the B-3 segment until we know what South Street is going to look like.

Plessman acknowledged that his property is not included in this change of zone request.

Staff questions

Carlson asked the staff to discuss “nonstandard” vs “nonconforming”. He believes that it was determined previously that the multi-family existing in this district shall be considered nonstandard instead of nonconforming. Rick Peo of the Law Department is not sure that the protections are substantially different. That area of the code is somewhat confusing because nonstandard is deemed to be a category of nonconformance. Nonstandard is designed to talk about area regulations as opposed to use regulations. Nonconforming uses are allowed to be rebuilt if not damaged more than 60%, or by special permit if totally damaged. Nonstandard has some expansions that are allowed more for expanding the size of the building. Carlson stated that the concern was losing a 6-unit conversion if the property is damaged. Peo stated that the owner has the right to maintain the 6-plex as is. If it were 60% or more damaged, then he would be required to conform to the R-2 zoning unless he gets a special permit from the City Council to build a nonconforming use. There is no guarantee that you can rebuild the nonconforming use. Nonstandard uses typically have to be rebuilt back to the existing setbacks if destroyed.

Procedurally, Peo does not believe it appropriate to split the application and put part of it on pending. He suggested that the Commission could make a recommendation of approval for only a portion of the application, but probably should make a recommendation on the application as a whole.

Taylor asked for an explanation of the B-3 at issue. Greg Czaplewski of Planning staff explained that the Plessman property at 935 Plum is zoned B-3 but is not included in this change of zone request. The B-3 just crosses South Street.

Marvin pointed out that below the B-3 is the Meier’s Cork and Bottle business, and then maybe when they zoned it B-3 they grabbed some homes. There is a church on the other B-3 property under consideration. What we would be rezoning from B-3 to R-2 would be residential homes currently sitting in B-3 or a church.

Bills-Strand noted that there is some commercial property on the northwest corner of 11<sup>th</sup> & Peach. Would that be grandfathered in as commercial? Czaplewski advised that it is currently a nonconforming use and would continue to be a nonconforming commercial use in a residential district.

Peo added that by definition in the R-2 district, pre-existing multi-family is allowed to be deemed nonstandard. Then they can be built by-right provided they meet all the setbacks (not parking). There is some confusion because that terminology goes contrary to the definition of nonstandard in the code.

There was no rebuttal by the applicant.



**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

December 10, 2003

Larson moved to approve the change of zone with a revised legal description, making the southern boundary the south side of Plum Street, eliminating everything on Plum Street south to South Street, seconded by Duvall.

Marvin stated that he will vote against the motion. The staff is recommending approval. The Everett Neighborhood is not against businesses coming in there, but if they want to tear down a house for a parking lot for a pawn shop or check cashing center or liquor store, we're not in favor of that. We'll have better control on what goes in that the neighborhoods would benefit from if we let the neighborhood come forward to say they will sacrifice the house for a specific use.

Larson believes that the Urban Development study will extend one block on either side of South Street so he thinks that area should be removed from the change of zone request. Carlson moved to amend, to make the boundary line the existing B-3 boundary, excluding the area currently zoned B-3, seconded by Taylor.

If the study shows that there needs to be more B-3 to increase parking, Bills-Strand wondered if this action eliminates that possibility. Czaplewski indicated that there were no comments from Urban Development on this application so he is not sure what study they may be conducting. Certainly, the staff will find out what is being done, and he suggested that the Commission could defer two weeks. Bills-Strand believes there is sufficient time between this hearing and the City Council hearing to figure that out.

Motion to amend removing the current B-3 zoned properties carried 4-3: Carlson, Marvin, Krieser and Taylor voting 'yes'; Duvall, Larson and Bills-Strand voting 'no'.

Main motion, as amended, failed 4-3: Carlson, Marvin, Krieser, and Taylor voting 'yes'; Larson, Duvall and Bills-Strand voting 'no'.

Carlson moved approval of a revised legal description, making the southern boundary Plum Street, seconded by Larson.

Bills-Strand inquired about Analysis #21, which indicates that the Planning Department would like to consider options to R-2 zoning. Bills-Strand wants to know how to get that accomplished. Director Marvin Krout suggested that the Planning Commission could make that recommendation to the City Council, again.

Motion for approval of a revised legal description, making the southern boundary Plum Street, carried 7-0: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 3431**  
**A TEXT AMENDMENT TO TITLE 27**  
**OF THE LINCOLN MUNICIPAL CODE**  
**TO ALLOW MEDICAL TESTING LABORATORIES**  
**IN THE B-1 LOCAL BUSINESS DISTRICT.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

December 10, 2003

Members present: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand.

Staff recommendation: Deferral until January 7, 2003.

Ex Parte Communications: None.

Carlson moved to defer, with continued public hearing and administrative action scheduled for January 7, 2004, seconded by Larson and carried 7-0: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand voting 'yes'.

**COUNTY SPECIAL PERMIT NO. 205**  
**TO OPERATE A RECREATIONAL FACILITY**  
**ON PROPERTY LOCATED AT**  
**9600 KOLBROOK ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

December 10, 2003

Members present: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: Carlson stated that he received phone calls and asked the individuals to send emails or letters to the Planning Department.

Mike DeKalb of the Planning staff submitted one letter in support and 22 additional letters and emails in opposition.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Dr. David Sumani**, the applicant, and requested that this application be deferred until January 21, 2004, although there may be some likelihood that it may go beyond that. The applicant has been discussing this application with the Health Department to see if there is an opportunity to get some actual sound readings taken for operation of this facility. With the current weather conditions, that is hard to do. There has been some conversation between the applicant and some of the neighbors and some other interested parties who have suggested some restrictions that might be appropriate. Dr.

Sumani is willing to discuss those and wants to have another meeting of interested parties. Dr. Sumani is interested in arriving at conditions of operation that will be satisfactory. If that is not possible, the applicant will be prepared to go forward at some point after there has been more objective measurement of the sound levels.

Marvin believes the deferral is appropriate because most of the letters are about noise and doing some kind of objective study. Hunzeker indicated that Dr. Sumani has done some sound level readings but he thinks it is probably better if the sound level readings come from someone with no stake in the application.

Larson moved to defer, with continued public hearing and administrative action scheduled for January 21, 2004, seconded by Duvall and carried 7-0: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand voting 'yes'.

### Support

**1. Don Showen**, 3331 N. 68<sup>th</sup> Street, testified in support. He has been a resident of Lancaster County since 1952 or 1953. He used to reside directly north and west of the subject property and he was a motorcycle enthusiast in the early 1970's, and that is why his parents purchased the property. He rode daily with other family members and guests, although it wasn't an organized event. It was a tremendous amount of enjoyment. The vicinity is conducive to off-road vehicles with rolling terrain, woods and hills. He looks forward to the challenges being met to achieve this. There is no other place for public riding in the county. He commutes to Iowa and Kansas to engage in off-road activities. It's a great family activity. This location will allow the residents of Lancaster County to have this right in the area. He thinks there is a big demand for it. The challenge will also be exciting because it is new to the County. There is a general club aspect to it which interests him because it offers a place to bring family and friends several times a week. This would bring it closer to the people who have to travel to be involved in off-road riding.

**2. Dick Doll**, 10405 S.W. 84<sup>th</sup>, testified in support. He owns property east and adjoining the Sumani property. He moved to this property in 1978 because of a passion to enjoy the quiet, natural surroundings, with birds, starry nights and country life. He sees his role as being caretaker of the land and he has hauled away many dump truck loads of garbage and derelict vehicles left by others. He also monitors wildlife. He continued a project started by a neighbor and friend for wild turkeys in the area. He believes there is a middle ground to be achieved with the motocross track. Dr. Sumani has promised to write many things into his request that will protect the neighbors and the land itself, including short track hours, not more than 3-4 days a week, generally during hours when the neighbors are at work, no permanent track lights, 8 or less published races a year, and a habitat and grassland improvement project. He believes a new outdoor passion can be

accommodated by the area. He is expecting and hoping for something not like Disneyland but not a flat racetrack. He thinks it will be family oriented. He will have the closest house to the track and he is not opposed. It has been a real positive experience for him so far. Dr. Sumani has started a thistle eradication project. He also put a switch on the mercury vapor light. He has confidence in Dr. Sumani's word.

**3. Mark Urbach**, 11200 S.W. 84<sup>th</sup>, testified in support. He owns the property second closest to the track. Dr. Sumani has taken a professional approach to this facility. He has tried to be cooperative with the neighbors. Kids today have a lot of options – drugs, alcohol, and other things – out at the race track you see a lot of fathers and sons doing this together. He does not know how many parents spend quality time with their kids, so this is one big positive for this facility.

### Opposition

**1. Kent Seacrest** appeared on behalf of **Dr. David Cochran** in opposition and expressed appreciation to the applicant for being willing to meet with the neighborhood interests. Therefore, he does not want to address the conditions today. However, he stated that he is raising a legal question as to whether this is even the "right" context. This is an application advertised as a recreational facility; however, the code definition of "recreational facility" does not include anything in the list of activities that is motorized. Terry Kathe, of the Building & Safety Department, who normally decides whether or not the land use is properly classified, raised this issue that the facility does not meet the definition of a recreational facility since none of the uses listed in the ordinance include motorized vehicles or equipment. The application indicates the club will be used for recreational purposes operated primarily for profit. Seacrest has posed the question to the County Attorney that this suggests a commercial use and we have zones that allow commercial uses. Seacrest does not believe this type of commercial operation is intended to fit under the definition of a recreational facility. It would need a commercial zone. Anything that is motorized - car racing or go-carts - has been located in industrial or commercial zoning. There used to be a track on North 27<sup>th</sup> Street north of Superior that was zoned I-4, and it did not have a special permit. Eagle Raceway in Cass County is zoned commercial. Maybe the better precedent is go-carts. The outdoor facility for go-carts by Waverly is zoned industrial. Champions on Cornhusker Highway is zoned industrial or highway commercial. There is a facility out by the airport on N.W. 12<sup>th</sup> that is enclosed and zoned I-1 on commercial type land. Seacrest could not find a past or present situation where we allow car racing in Lincoln other than in a commercial zone. Terry Kathe also raised the issue that the applicant showed an observation area on the site plan, and under the definition of a recreational facility there is not supposed to be seating. While the neighbors are working with the applicant, Seacrest would ask for a legal opinion as to whether we are in the proper forum, and maybe a better forum would be to ask for a commercial zone.

**2. Stefano Brooks**, 7431 W. Saltillo Road, testified in opposition and asked that the Commission please consider the animals. He has horses that hear better than we do, as well as dogs, chickens and peacocks. Please take this into consideration when you get more information on the noise levels.

**3. Ron Hall**, 8301 W. Mountain Ash, testified in opposition. He heard that there will be sound tests done with another meeting on January 21<sup>st</sup>. He does not know how they are going to get enough people out there in January to make the same volume of noise as they can make in July. He thinks the sampling will be very inaccurate.

Mike DeKalb of Planning staff stated that the staff has talked with Building & Safety and this application has been referred to the County Attorney's office. However, Planning staff is comfortable that this is a facility for the participants and meets the intent of the recreational facility language.

Marvin inquired about the issue of "for-profit" commercial. DeKalb does not believe that is an issue. There are other recreational facilities in the County that are "for profit" as well as nonprofit, i.e. golf courses.

**CHANGE OF ZONE NO. 3429**  
**FROM R-4 RESIDENTIAL TO R-T RESIDENTIAL TRANSITION,**  
**and**  
**SPECIAL PERMIT NO. 1713B,**  
**AMENDMENT TO THE ASPEN 3<sup>RD</sup> ADDITION COMMUNITY UNIT PLAN,**  
**and**  
**USE PERMIT NO. 155,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 56<sup>TH</sup> STREET AND PINE LAKE ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

December 10, 2003

Members present: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: None.

Tom Cajka of the Planning staff submitted 16 additional letters in support of the proposal.  
Proponents

**1. Brian Carstens** appeared on behalf of **Aspen Partnership, Krein Real Estate and Bill Krein**. The subject property is located at the southwest corner of 56<sup>th</sup> & Pine Lake Road, consisting of approved B-2 zoning that is currently not developed and O-3 Office with a postal

distribution center. There is currently an administrative amendment and a final plat pending on the O-3, with a bank user locating up in the corner, and some potential leased office space. Krein has been marketing the two multi-family areas for the past five years with not a whole lot of interest in the large three-story buildings. Krein has been working with some adjacent neighbors and they have come up with the proposed plan to remove the 150-plex building, and replacing it with nine 5,000 sq. ft. residential-transition buildings and 10 single family lots, which match what is going on in the rest of the Aspen subdivision. Bill Krein was the original developer of the Country Plaza use permit at 56<sup>th</sup> & Waltz Road and he has experienced good success there and would like to repeat that. The nine office buildings are more in scale with the existing neighborhood. They are adding ½ acre to the green space. The neighbors on the west side of the creek, along with the applicant, have expended a lot of time and energy improving the creek area in the past five years. The neighbors do not want to look across this creek to see a three to four story 150-plex in their back yards.

Carstens pointed out that there are five neighbors in support in attendance today. The developer wants to make this change at this time since the market has changed in the last five years. This application increases the open space/common area. Three of the office buildings closest to the single family will have fronts with parking.

It was confirmed that the entry point into the commercial area would be Stephanie Lane and Red Rock Lane. Marvin noted that when they widen Pine Lake to 4-5 lanes, typically at 56<sup>th</sup> Street they will put a concrete median back a ways. Is that going to plug Stephanie Lane? Carstens acknowledged that the preliminary plans show a median going across Stephanie Lane and the neighborhood associations on both sides are in opposition to that.

Carlson noted that the apartment building to the north remains. He asked Carstens to help him understand how the residents of the apartments and the residents of the new single family will move by foot into the office center and the service/commercial on 56<sup>th</sup> Street. Carstens pointed out that there are sidewalks on both sides of the public streets and the private roadway. Most of the parking for the R-T buildings is internal. There would be pedestrian circulation along all of the perimeter and internally through the common outlot all the way from Beaver Creek Lane.

**2. Roger Ehlers**, 7226 Sugar Creek Circle, which is just to the west of the proposed area, testified in support. He is Vice-President of the Sugar Creek Homeowners Association. A majority of the property owners on Sugar Creek Road and Sugar Creek Circle are in favor of this proposal. A couple of concerns include the presence of the current zoning with the apartments. The neighbors are opposed to the three-story 18-plexes, which would not be considered “smaller buildings”. The other issue is traffic. The analysis says that Cavett Elementary is the closest, but he believes it is Humann. If you have 226 apartments you will have traffic coming down Old Creek and Sugar Creek to go to that school. Much of the traffic will go through the residential area. Krein Real Estate has been very good to work with. These neighbors actually initiated this idea and went to Mr. Krein, who also wanted to see

something different. The green space was a cooperative effort between the people who live on that green space and the applicant. As far as the promise that there would be no change in zone in the future, Ehlers purported that when that promise was made, Sugar Creek Circle did not exist. These neighbors have worked with Mr. Krein and this is a vast improvement of the development for this area. Ehlers stated that he is not speaking for the association, but he believes the majority would agree with his testimony.

### Opposition

**1. L.F. Roschewski**, 4820 Sugar Creek Road, testified on behalf of 22 homeowners in opposition because when they purchased their homes on Old Creek Road and Sugar Creek Road, they were informed that the zoning would remain R-4 Residential. They believe this designation should remain so that the value of their property will not be diminished. The change to R-T will cause an abnormal flow of traffic on these two streets because the left hand turns from Stephanie Lane onto Pine Lake Road seem to be eliminated under the proposed 4-lane reconstruction of Pine Lake Road. This increased flow would go into Old Creek Road to the stop light at Beaver Creek and Pine Lake. Old Creek is a private road maintained by the homeowners which would be costly to maintain if the traffic is increased. Many of the homeowners are senior citizens and this change would be detrimental to the value of their property.

Roschewski agrees that the Comprehensive Plan identifies this property as urban residential. There is currently 84,000 sq. ft. of commercial floor area in the B-2 and O-3 to the east of Stephanie Lane which has not been used. Use Permit 141, Thompson Creek, approves 76,000 sq. ft. of office space, none of which to date has been built. (Thompson Creek is directly south of Campbell Nursery). If the proposed change of zone is successful, it will provide additional opportunity to require or to request a change to the north adjacent to Pine Lake Road to commercial. This would create more intrusion into his neighborhood. Promises were made that the developer would not seek a change of zone for any non-residential zoning. This guarantee was made at the Planning Commission hearing on May 21, 1997. Who would build 10 expensive homes directly across from a commercial office building? The developer has not met or communicated with the property owners on Old Creek Road as to this change. Roschewski submitted a petition of 22 signatures of the homeowners residing on Old Creek Road in opposition, plus 10 additional homeowners who did not sign because of the bad weather yesterday. Some are out of town. 85% of Old Creek Road residents, property owners who would be subject to the intrusion (more than the Aspen homeowners), support denial of the zone change.

Marvin suggested that the apartments will generate trip traffic. Roschewski agreed, but the chance of those apartments being built are pretty rare. He does not think they will ever build the apartments. His opinion is that the idea is to slowly intrude and put this into commercial use. Pretty soon the other area zoned R-4 will be requesting a change, also. He wants to stop it here.

Response by the Applicant

Carstens advised that the proposed R-T is a transition district between the B-2 and the O-3, as well as 56<sup>th</sup> Street traffic. He did an informal call this morning with regard to apartment complexes between 40<sup>th</sup> and 14<sup>th</sup> Streets south of Pine Lake Road which are existing or under construction. There is one project consisting of 104 completed units, with 49 occupied; another for 120 units, with 86 occupied; another project that has been there for 5-6 years, with 96% occupancy; brand new complex with 120 units that has about three buildings ready to be occupied, with 4 units out of 120 leased. This demonstrates that there is not a pent-up demand for apartments in this area at this time.

Marvin inquired as to why the developer wouldn't use the existing business district at 56<sup>th</sup> & Pine Lake Road. Carstens responded that the B-2 is suited for more retail type uses. The office area on the south side of Red Rock is starting to bubble now. Krein would like to keep the other three office buildings as rentals and these R-T buildings would be sold units. "It doesn't matter if we have apartments or the office, we think it will be about a wash on traffic." If it was apartments, the kids going to Humann School would be generating a lot of traffic, as well as Pound Middle School.

Carlson asked the applicant to respond to the comments about the proposed apartments to the north of the R-T, and whether they will remain as apartments. Carstens stated that at this time, the apartment site to the north is still an apartment site in the developer's mind. He might run a road between there. As far as the transition between the single family and the R-T office, there was thought about making those look like fronts. Carstens believes that the developer would be glad to take the parking stalls off, but they thought it would look more aesthetic than the back of the buildings with air conditioners, etc.

**CHANGE OF ZONE NO. 3429**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

December 10, 2003

Larson moved approval, seconded by Duvall.

Marvin would like to keep Stephanie Lane open to both sides of the street. If they close that off, whether it's apartments or offices, they are going to get people driving in areas where they are not designed to drive. He recommends keeping the streets open.

Motion for approval carried 7-0: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand voting 'yes'. This is a recommendation to the City Council.



**SPECIAL PERMIT NO. 1713B**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

December 10, 2003

Larson moved approval, with conditions, seconded by Duvall.

Bills-Strand commented that with the shortage of single family lots, she is glad to see some more added. She does question the parking across the street, but she likes the fronts of the office buildings.

Motion for conditional approval carried 7-0: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

**USE PERMIT NO. 155**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

December 10, 2003

Duvall moved approval, with conditions, seconded by Larson and carried 7-0: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 4:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 7, 2004.